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THE  
CASE OF MR. C. FENWICK,  
LATE COMMANDER OF THE  
SUCCESS GALLERY.





THE  
CASE OF MR. C. FENWICK,

LATE COMMANDER OF THE  
*SUCCESS GALLERY,*

An ARMED SHIP employed by the MADRAS GOVERNMENT,  
during the Late War :

HUMBLY SUBMITTED TO THE CONSIDERATION OF THE  
PROPRIETORS OF EAST INDIA STOCK.

TO WHICH IS ADDED,

THE OPINION ON HIS CASE,

Given by Sir WILLIAM SCOTT, Advocate-General; Mr. THOMAS  
DAVIS, the Hon. Company's Advocate-General at BENGAL;  
and Mr. SULLIVAN, the Attorney-General of MADRAS :

TOGETHER WITH

THE ORDERS OF GENERAL COOTE;

The Obeying of which has rendered this APPEAL to the PROPRI-  
ETORS necessary.

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L O N D O N :

PRINTED AT THE Logographic Press.

MDCCLXXXIX.

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CASE OF MR. CALDWELL

IN THE

SUPREME COURT

OF THE STATE OF NEW YORK

IN SENATE

CHIEF JUSTICE

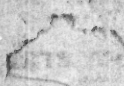
OF THE SENATE

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IN SENATE

CHIEF JUSTICE

OF THE SENATE

44/42-3-24/44



TO THE  
PROPRIETORS  
OF  
EAST INDIA STOCK.

NOTHING can be so distressing to one possessing a feeling mind, as to be obliged, in appealing to the justice of a public body, to speak of the merits of his own services: for this reason, I have taken the liberty of laying before the Proprietors the simple and unadorned statement of my Case, as laid before Sir *William Scott*, his Majesty's Advocate-General, together with his Opinion, and that of the Honourable Company's Advocate-General of *Bengal*, given to Lord *Cornwallis*; and also the Opi-

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Symonds - 3/24/44

nion of the Attorney-General at *Madras*, given to that government; all of which perfectly agree in my favour. I therefore shall only relate simply the facts that render this appeal to the justice of the Hon. Company necessary; and as all the papers alluded to here, are before the Hon. Court of Directors, I shall, of course, be instantly detected if I advance any circumstance that is not perfectly true. I have likewise added, in the APPENDIX, the orders immediately relating to this event in full,—the substance being only laid before Sir *William Scott*.

It is necessary to premise, that in *February*, 1779, in the presence of Sir *Henry Cosby* and a Mr. *Wooley*, I entered into a contract with his Highness the Nabob of the *Carnatic*, in which I engaged to keep his ship in all her sailing charges for three years, provided I might have the use of her for that period; as the ship had been a very great expence to him,



him, he very readily acceded to my proposal. I accordingly made several voyages with the said ship; and on my return to *Madras* from *China*, in *January* 1781, I fell in with a Squadron of *French* ships, under the command of Count *D'Orves*, then cruizing off *Madras*, and, after much difficulty, I was fortunate enough to gain the Roads. The above fleet having bore away early in *February* for *Pondicherry*, where they anchored, the situation of the *British* army, then encamped on the *Red Hills*, under the command of that ever to be lamented officer Lieutenant-General Sir *Eyre Coote*, became extremely critical, and obliged him, on the appearance of *Hyder's* army, to push for *Cuddalore*, in hopes of obtaining grain and other provisions for its subsistence. On the General's arrival at *Cuddalore*, although every exertion was made by Mr. *Daniel*, the then Chief, yet the supplies produced by his activity, were found totally inade-

quate to the wants of the army. From the circumstance of the *French* fleet being on the coast, and obliging the vessels already dispatched from *Madras* with provisions for the army, to take shelter under the then neutral guns of *Sadras*, all hopes of further resources were cut off by sea, unless some great exertion should be made by the Presidency, and the event of such exertion prove successful.

There was, at this period, three India-men lying in *Madras* Roads, viz. the *Neptune*, the *Grosvener*, and the *Belmont*, all commanded by officers of the first abilities; from reasons it does not become me to point out, I was chosen for the hazardous enterprise of carrying supplies to the army in the face of the *French* fleet.

Application was made by Government to the Nabob, who consented that his ship  
 3 should



should go; but neither he nor the Company furnished one rupee to man, victual, and fit out the ship for this expedition, which I did out of my own purse, and also lent a snow to the Company, my property, to aid in this enterprize, totally fitted out by myself, without one rupee security from Government. To these facts the Honourable Company's own records bear most ample testimony, and can be further proved by the following gentlemen now in *England*, viz. Major-General *Stuart*; Mr. *Samuel Johnson*, then a member of the select committee; Colonel Sir *Henry Cosby*, then commandant of cavalry; Mr. *Taswel*, then master attendant, to whose great exertions in sending off the supplies intended for the army, the Hon. Company are extremely indebted.

That from the period above stated, the ship was nominally in the Hon. Company's

monthly pay, but all the expences were really advanced by myself. On the 18th of *February*, I received my instructions, marked *A*, from the *Madras* Government, ordering me to obey all commands I should receive from General Sir *Eyre Cooté* : I sailed accordingly for the army ; and, after delivering the stores, money, and troops, I received from General *Cooté* the orders marked *B*, in the Appendix ; by which I was commanded to go to *Nagore*, and bring off some troops that were there, which the General was apprehensive would fall into the hands of the enemy. Such was my zeal for the good of the service, that I brought from *Nagore* near 1000 men ; a number not to be credited, was not the return of them before the committee of correspondence at the *India House*.

On my return to *Cuddalore*, I received the order marked *C*, from the Chief, acquaint-  
ing



ing me of a vessel loaded with elephants being at *Porto Novo*, then in the possession of *Hyder*; and that he proposed, as soon as the troops were landed, to dispatch my ship, in company with a long-boat, to be manned and armed from the army. Shortly after, I received the order marked *D*, from Lieutenant-General *Coote*, commanding me, instantly that the troops were landed, to proceed and take the vessel from *Hyder's* people. So impatient was the General to have this service performed, that I received, at eleven o'clock at night, a second order to proceed to *Porto Novo*, *whether I could land all the troops or not*. I accordingly, the next evening, proceeded, and captured the vessel in the manner as set forth in the affidavits, the substance of which is in the case, as laid before Sir *William Scott*. The enemy had landed but one elephant out of fifteen, and I brought the vessel, with the remaining fourteen, to the General, at *Cuddalore*, Will

it be believed by the Proprietors, that, for this act, I have suffered, unprotected, a five years prosecution? which, although I gained my cause, has totally ruined my fortune and my health; and it is for this that I am reduced to ask, as a favour, of the Company the restitution of my property. But, to proceed:—On my return to *Cuddalore*, I sent on shore for a surgeon to dress the wounded, and reported, as was my duty, the success of the expedition. As soon as a list of the cargo and elephants could be obtained, I sent them to the General's Secretary, and received from him the answer marked *F*, acquainting me that the General had appointed a Mr. *Forster* agent, and would settle the business himself. Three days after the capture, I was ordered by the letter marked *G*, to *Porto Novo* again, and to endeavour to destroy *Hyder's* armed boats, and to remain on that station. Accordingly, all my men were taken out of the prize,  
and



and some artillery-men sent on board from the army, who, from the agent's account, now before the Directors, seem to have had some extra-pay from him. On the 29th of *March*, I received at *Porto Novo*, from the General's Secretary, the orders marked *H*, sending me to *Madras*: so that from the time the vessel was captured, to long after the cargo was sold, I had no communication with the agent whatever. I took the vessel by order of the General,---brought her to him,---delivered her over to the artillery-men sent to take charge of her by the agent appointed under the General's orders, who bought the elephants for the use of the Hon. Company's army for the small sum of 1040l. when it is notoriously known that they were worth 6000l. If any impartial person will say, that in any thing I have done, as here related, I deserve, with a large family, to be totally ruined,---I shall, with becoming fortitude, submit to my fate.

From

From the above period until about six or seven months after the death of General *Coote*, and two years and an half after the capture, I heard no more of the business.— What then must have been my astonishment, on being acquainted by a Mr. *Popham*, on the 20th of *June* 1783, that he was going to proceed against me in the Mayor's Court, on account of a man who claimed the vessel I had taken and the elephants, as his property. I instantly wrote him a letter, complaining of being sued in a court of common law for a vessel taken by the orders of General *Coote*, and the impossibility for me to find bail to such an amount, I therefore hoped he would prevail on his client to submit the matter to the arbitration of the Governor and Council, and rather than be plagued by any law-suit, I would with pleasure pay back what I received from the General's bounty as my share of the prize money\*. However, this equitable and candid

\* This letter is before the Directors.



did propofal did not answer the intentions of the Attorney and his client, for I soon learnt that they were making out an account in order to arrest me by a warrant of the Mayor's Court ;—on the 26th of *June* I sailed from *Madras*, and on the 20th of *July* I received, at *Bengal*, a letter from Mr. *Popham*, acceding to my propofals of arbitration, if I would give him for his good offices two thousand pounds.

Alarmed at fuch enormous demands, I laid all my papers before Mr. *Church*, a Counsellor at Law, who advifed me to take no fteps without the confent of the *Madras* Government, as I had become liable to the fuit through obedience to their orders, I could not with propriety take any meafures to bring the matter to iffue without acquainting them, and by no means to fuffer a fuit in the Mayor's Court, for no civil action could be held on a prize caufe, and if I fub-

mitted

mitted to the Mayor's Court, and they should from ignorance take cognizance of the suit, I must be condemned in costs and damages, for the common law could not allow of any alteration of property by the force of arms, which the law of nations and the usages of war have from time immemorial functioned; and it is to avoid such litigious suits, that the Legislature appointed, under the Great Seal, at the commencement of the war, Prize Courts to judge by the *law of Nations, and usages of Admiralty*, all captures made during hostilities.

I enclosed Mr. *Church's* opinion, with notarial copies of the orders under which I acted, to the Government at *Madras*, and called on them to defend what was an event in consequence of their own instructions. In this letter I represented to the *Madras* Government, the fatal check it would be to discipline, if inferior officers were abandon-  
ed



ed to prosecution for events happening on actual service, in consequence of their obedience to the written orders of their superiors. This letter was received by the *Madras* Government on the 6th of *October* 1783, soon after which, under the most perfect security that no civil action could be carried on against me for a prize cause, I returned to Europe.

It seems, by the proceedings of the Mayor's Court, transmitted home to the Honourable Court of Directors, that a summons was issued by the Mayor's Court on the 29th of *September*, 1783, on the complaint of the pretended owner, which was returned the next day *non est inventus*; from this period the process went on secretly in the Mayor's Court, and a judgment was obtained in *October* 1785, for twenty-one thousand pounds, for non-appearance to a summons issued two months after I left *Madras*.

My

My attorney, Mr. *William Webber*, having arrived in *England* in *July* 1786, by the *King George*, Captain *Court*, accounted to me for my property in *India* by an information that filled me with horror, viz. that my property was all taken by an execution under the Mayor's Court. Alarmed beyond measure at this intelligence, I eagerly embraced the opportunity of a *Danish* ship then ready to sail, and proceeded to *India*;—immediately on my arrival there, I laid the reasons of my return to *India* before Lord *Cornwallis*; and Mr. *Popham*, the attorney, sending the decree and proceedings of the Mayor's Court round to *Bengal* to arrest me, his Lordship ordered Mr. *Davis*, the Hon. Company's Advocate General, to inspect the proceedings, on which he declared, that I could not have refused obeying the orders of General *Coote*, without the forfeiture of my *character and honour*, and the *deprivation of my command*,—he also declared the whole proceedings



proceedings against me to have been *illegal* and *unjust*; which opinion is inserted at large immediately after Sir *William Scott's*; on which the papers were returned by Mr. *Popham's* agents to *Madras*, where I resolved to follow them.

On my arrival at *Madras*, I called on that Government in a letter addressed to them, dated *August 22, 1787*, to defend and save me harmless from the consequences of this wicked and corrupt suit, instituted on the grossest *perjuries* and *mistatement of facts*, but was refused every other relief than the inclosing me the Attorney General of *Madras's* opinion on my case, which I have also inserted. I was therefore under the disagreeable necessity of appealing from the decision of the Mayor's Court to the Court of Appeals at *Madras*.

Whilst this appeal was pending, Mr. *Popham*, the attorney, taking the advantage  
his

his situation of being the Hon. Company's Solicitor gave him, wrote a long letter to the Members of the *Madras* Government who compose the Court of Appeals, pledging himself as a lawyer, that the Mayor's Court had a right to take cognizance of prize causes, and that his whole proceedings had been perfectly regular and agreeable to law; and he also asserted he would prove, that I had exceeded in every respect the orders of General *Coote*:—it is easy to assert, but often very difficult to prove;—yet will the Hon. Court of Directors and the Proprietors believe, that these assertions of Mr. *Popham's* are given as reasons by their Solicitor for my not obtaining redress. The first assertion is evidently contradicted by the opinions of the first law officers in *India* and in *England*. The second, that his proceedings had been perfectly regular, is flatly contradicted by the subsequent decree of the Court of Appeals, given  
on



on the 9th of *November*, 1787, at *Madras*, reversing the decree of the Mayor's Court as having been unjustly obtained. His third and most material assertion, that I had exceeded the orders of *General Coote*, is positively contradicted by the arbitrators, who declared, that I had in no manner exceeded his orders.

Mr. *Popham's* golden dream having vanished on the decrees being reversed, and my obtaining the remnants of my property from the hands of the sheriff, had immediate recourse to a fresh warrant of arrest, for a sum so enormous that it was impossible to find bail to,—hoping still to bring me to a compromise :—I complained to Government of the usage I met with in return for the services I had performed :—they now, seeing the illegal practices that had been held against me, at last interfered, and made Mr. *Popham* accept of 15,000 pagodas bail for a

C

debt

debt swore to of 35,000 ; Mr. *Popham*, now finding that I was resolved to give in an answer to the bill he had filed, at the same time protesting against the jurisdiction of the Court, and fearful of the perjuries so evident in the bill of complaint and affidavits, he proposed an arbitration, which, with the consent of the *Madras* Government, I acceded to. The arbitrators accordingly met and unanimously declared, that I had in no manner exceeded the orders of General *Cooté*, and that the whole suit was instituted under a misstatement of facts :—the rest of the award is mentioned in the case laid before Sir *William Scott*, and was forwarded home by the *Madras* Government.

On the final award given by the arbitrators, I addressed the *Madras* Government for an indemnification for the losses I had so unjustly sustained, and sent them an account of my charges with the proper vouchers,



vouchers, and received the answer marked I. in which they say, they will refer the matter to the consideration of the Court of Directors; and, that they will be happy in mentioning, *in the most favourable manner, the services performed by the ship under my command, during the late war in India*: I accordingly had the following extract of their letter to the Court of Directors sent me.—

“ Captain Fenwick having made application  
 “ to us for a compensation, on account of  
 “ his expences for a suit instituted against  
 “ him, we enclose a copy of his address to  
 “ us, and his arbitrated case, that you may  
 “ be enabled to determine how far he is  
 “ entitled to your bounty. It appears by  
 “ the records of the Military department  
 “ that Captain Fenwick was very active in  
 “ the discharge of the services entrusted to  
 “ him by this Government, as Commander  
 “ of the *Success* Galley, and that General  
 “ Sir Eyre Coote was well satisfied with his  
 “ conduct.”

“conduct.” I have also added in the Appendix, a letter from the Adjutant General of the army under Sir Eyre Coote, marked K. as an additional proof of the merit of my services.

On my arrival in England, exhausted with anxiety—my health and fortune totally ruined, I memorialled<sup>presented</sup> the Court of Directors in August last: some time after I was informed that the Hon. Court had referred the matter to the Company's Solicitor: this, I must confess, astonished me, as the matter had been tried at *Madras*, no law question remained; I therefore naturally imagined the only consideration before the Court of Directors was, the nature of my sufferings, and compensation due to me for them, and the avowed merits of my services. Nor could I conceive how an attorney at common law could be a judge of the propriety of the orders I received from General Coote,



Coote, whilst on actual service. To the humane do I appeal, for those only can have an idea of what were my feelings on receiving, on the 16th of October last, a letter from the Company's solicitor, in which he says, as the capture was not a legal one, I cannot be entitled to any indemnification from the Company : an idea so inconsistent with, and subversive of all discipline, astonished me ; to make the inferior officer answerable for the conduct of his superior, is a doctrine totally new and unheard of : he likewise affirmed that I had sold the vessel and cargo of my own authority ; to this I answer, that had I produced no other vouchers than the General's orders to capture the vessel, and the *Madras* Government's affirmation, that General Coote was well satisfied with my conduct, it would have been highly illiberal to accuse me of such a breach of discipline ; for no one, that ever was with an army, could,

for

for a moment suppose, that General Coote was so negligent, and so inconsistent, as to send me with a detachment from his army, with the most positive orders to take out of the enemy's hands warlike stores of such consequence as 14 elephants, and that, on return, he would have suffered me to appropriate these to my own use, without his consent; fortunately the subsequent orders, marked G. and the secretary's letter, to me, marked F. clears up that point, beyond a doubt: add to which, Mr. *Frayer's* affidavit, and *Fielder's* both agree that Mr. *Forster* was appointed, by the General, agent, and that they received from him their respective shares of the prize-money. The Solicitor says also, that the captors were only entitled to a salvage; I believe, on inspecting the account of what we received, we only got about one fifth of the whole value, and the Hon. Company got the rest; as there was not 7000 star-pagodas divided, and the cargo



cargo, which was bought for the army was valued by the plaintiff at 35000. As I regarded the plea of the vessel's not being a lawful prize, as a subterfuge to deprive me of my claim, and thinking it rather a piece of presumption in an attorney at common law, taking on himself to judge of what constituted a prize or not, I laid all the evidence before Sir William Scott, that either was brought before the arbitrators, or the Court. It will be evident to those, who, from a love of justice, have taken the trouble to read this case, that the plaintiff was found in an enemy's port, loaded with warlike stores, which elephants are ever considered in India to be; and, that he was found under a Dutch pass and colours, which the following case, laid before Sir William Scott, more clearly illustrates.

From the above statement, from a perusal of the case, Sir William Scott's opinion,

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and

and, on a reference to the Company's records, it will appear clearly to the Proprietors, that in February, 1781, I fitted out at my own expence, the *Success* Galley, and the *Amazon* Snow, to go to the army with supplies, of which they were in the greatest want—that I maintained these vessels, at my own charge, as long as they were wanted, advancing every rupee necessary for their expences—that three months after they were discharged from the service I received payment in bills on Bengal, at 375 rupees for 100 pagodas, at the time I could have bought four hundred rupees for a hundred pagodas at *Madras*—The discount on these bills, given me for myself and ship's company, and the ship's expences, amounted to more than three times the pay allowed me—that during my stay with the army, I took from the enemy fourteen elephants, and added them to the Company's army, and I brought from *Nagore* near 1000 sepoys, and landed them safe in camp, and also treasure, from *Madras*, to near the  
amount



amount of £.100,000; two cargoes of stores, and one of powder, from *Bengal*, of 2100 barrels against the monsoon. My reward has been a five years prosecution, insulted by injurious and unwarranted reflections, made, to negative my claim, by the Company's solicitor; assertions as contrary to the principles of discipline, as they are to the *laws* of this country.

I am certain, had I the ability and the inclination; which I declare I have not, I need not appeal to the laws of my country for redress; the justice of the *Proprietors* and the *Directors*; I have not a doubt, will ultimately give me an ample indemnification, although I have been kept in constant attendance for an answer to my memorial, since August last, at a very heavy expence, and accumulated inconveniences: therefore, with a perfect reliance on their candour and justice, I trust my cause to their impartial decision, pledging myself once more, that every order annexed, in

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the

the Appendix, is copied word for word,  
from the originals in the India-house.

I have the honour to subscribe myself,

The Proprietors most faithful,

And most humble servant,

C. FENWICK.

*Edwards Street  
V Square*

One remark I beg leave to make: if the  
plaintiff's claim had been founded, is it to  
be believed that his attorney would not  
have recommended him to send his papers  
to the Admiralty-court, and not to have  
suffered him to prosecute me in a court not  
competent to decide on his cause, merely  
to get money from him, and to compel me  
to a valuable compromise, to save me from  
being held to bail for an excessive sum?  
Indeed, Mr. *Popham* well knew that the  
Mayor's Court was incompetent, for, at the  
very period he was prosecuting me in it, he  
was protesting against its jurisdiction, for  
Captain *Gower*, of the *Medea*, in a prize  
cause.



## CASE OF MR. C. FENWICK.

*as laid before Sir Eyre with his opinion*

IN the year 1781, the *Success* Galley, belonging to his Highness the Nabob of the *Carnatic*, was, at the earnest request of the *Madras* Government, put by him under their orders; who immediately, by a letter from their Secretary to Captain *Fenwick*, the commander, directed that the said vessel should proceed to *Cuddalore*, and that the said Captain *Fenwick* should follow such directions as he should receive from the Commander in Chief of the Army, or from the Chief and Council of *Cuddalore*: and the same letter expressed, that the ship should be employed so as to afford the best assistance to the army.

Captain *Fenwick* accordingly made the best of his way to *Cuddalore*; and, as directed, put himself under the orders of Sir

*Eyre Coote*, who sent him to *Nagore* for troops. On his return with the troops, he perceived a vessel lying at anchor in the Roads of *Porto Novo*, then in the possession of *Hyder's* forces.

On his arrival at *Cuddalore*, he received a letter from the President there, containing the following clause:—\* “ *A Snow* belonging to a *Chuliar* merchant, mounting five three-pounders, four swivels, and forty-five *Lascars*, laden with rice, pepper, elephants, &c. having been taken by *Hyder's* people, off *Porto Novo*, and carried into that place, the General, *Sir Eyre Coote*, being desirous of retaking her, has ordered that a vessel of force should be dispatched, with a proper force of military, to retake her. She, at present, lays in deep

\* See these orders at large in the printed Case, a copy of which was forwarded to the Court of Directors from *Madras*.

“ water ;



“ water; and we think she may be easily  
 “ recovered. On the disembarkation of  
 “ your sepoy, we propose to dispatch the  
 “ *Succes*, with a proper military force.”

Immediately afterwards, he received the following orders from the General's Secretary, dated the 15th March, 1781:—

“ I am desired by Sir *Eyre Coote* to acquaint you, that it is his pleasure that  
 “ you land the troops with all expedition,  
 “ for which boats are ordered to attend,  
 “ and immediately after to proceed to *Porto Novo Roads*, and take a vessel which was  
 “ seized yesterday morning by *Hyder's*  
 “ armed boats off that place. Her recovery is of importance:—Sir *Eyre Coote*,  
 “ therefore, wishes you would contrive so  
 “ as to arrive there early tomorrow morning, or sooner, if possible.”

So anxious was the General lest the elephants should be landed by the enemy, that

he even thought the risk of losing the troops on board of the *Succefs* a secondary consideration; for he repeated his orders, desiring Captain *Fenwick* to proceed, whether he could land the troops or not.

The *Succefs* Galley, agreeable to the above positive orders, proceeded to the said place with all possible dispatch, and came to anchor about two or three miles from the vessel, at *nine o'clock at night on the 17th of March*; and the long-boat, manned and armed with a detachment from the army, under Ensign *Kenny*, was sent in with the *Succefs* Galley's boats, came up with the vessel, and boarded her before the centinels had time to challenge them: the greatest part of the enemy's sepoy's escaped, with part of the ship's company, in two double *chillingas*, (except 16) *leaving their loaded muskets on the quarter-deck* †.

† See this described at large in the printed Case laid before the arbitrators in *India*, and forwarded to the Court of Directors.

Captain



Captain *Fenwick* having returned to *Cuddalore* with the vessel on the 18th of *March*, reported his proceedings officially to the General's Secretary, and sent him the list of the cargo, and all the papers found on board, and received the following answer:

“ I have received your's, with the list  
 “ of the cargo, &c. But as Mr. *Forster*  
 “ has been nominated agent for the cap-  
 “ tors, it will be necessary that he should  
 “ counter-sign it; when, I do not doubt,  
 “ but that the General will settle the mat-  
 “ ter to the satisfaction of all parties.”

The vessel and goods captured were sold by the above-mentioned Mr. *Forster*, and the money distributed by him, as will appear fully in the affidavits of many of the captors, sworn at *Madras*.

At the conclusion of the late peace, when Captain *Fenwick* was returning to *England*,

he received intimation that one *Malim* claimed the vessel and her cargo as his sole property, and threatened Captain *Fenwick* with an action of debt in the Mayor's Court.— Captain *Fenwick* informed the *Madras* Government, by letter, of this intimation, and enclosed them General *Coote's* orders for capturing the vessel; and referred them to their own records, which would prove that the elephants had been taken for the use of the army at an arbitrary valuation of not one-sixth part of their worth, and that the produce had been distributed amongst the captors by General *Coote's* orders. This letter was received by the *Madras* Government on the 6th of *October*, 1783. On the 29th of *September*, 1783, when Mr. *Fenwick* was absent, a bill was filed in the Mayor's Court, stating, that Captain *Fenwick* was indebted to *Malim* in the sum of 35,000 *star pagodas* †, the value of the said vessel and goods,

† About 14,000*l.*—The Company had these elephants for 1,040*l.*

and



and that the said brig was the property of the said *Malim*; and as he was trading with her *on the Coromandel coast, a little to the southward of Cuddalore*, he was taken by Captain *Fenwick*, although he then was, and always had been, trading with the *English*, and under their protection, having no military stores § on board, or intending to assist the enemies of *England*; and also that Captain *Fenwick* did not shew him any lawful commission for seizing the vessel.

In support of the claim, affidavits were made by *Malim* and others, describing themselves to belong to the vessel.

*Malim* swore positively that the vessel and cargo were taken by Captain *Fenwick* without any cause or reason, or without his having sufficient authority. His affidavit is dated in 1783.

§ Elephants have ever been considered as part of war arrangements in *India*.

In

In 1785, two persons on behalf of *Malim*, swore || that the *Cander Baux*, (the name of the vessel) proceeding on her way to *Cuddalore*, near the *Roads of Porto Novo*, on the 18th of *March*, was stopped by an armed boat belonging to *Hyder Ally*, who boarded her, and placed in her *fifteen sepoy*s, and took with them on shore the first *nocadah*, or supercargo; that on the next day, *they made the sepoy*s drunk, and imprisoned them; and whilst they were waiting for a land wind, to proceed to *Cuddalore*, another boat, with twelve armed men, belonging to the *Success Galley*, boarded her, and said they came to her assistance; that soon after a land wind sprang up, and they were carried to *Cuddalore*; and after three days, they were ordered on shore, and the vessel and cargo were taken by Captain *Fenwick*.

|| These affidavits were forwarded home by the *Madras Government*.

Two



Two other persons also swore that they were at *Porto Novo* during *Hyder's* war, when the *Cander Baux*, belonging to *Malim*, on her road from *Quedda*, was stopped by an armed boat belonging to *Hyder's* people, who boarded her, and leaving on board some sepoy, brought the first *nocadah*, or supercargo, on shore, and insisted on his landing his cargo, but which he refused to do\*; and, on the next day, Captain *Fenwick* arrived in the Roads of *Porto Novo*, and carried the vessel away.

The matter, although a prize cause, came on for a hearing in the Mayor's Court of *Madras*; and in default of Captain *Fenwick's* appearance, who had never been summoned, and was then in *England*, a decree was given

\* He would have acted more in character, if he had refused to have been brought into *Porto Novo* by force, as he swears he was, by 15 men, whilst he had 45, as appears by Mr. *Dent's* orders to capture the vessel.

by

by the Mayor's Court touching the bill of complaint, whereby he was condemned to pay to the said *Malim* the sum of 53,000 star pagodas, or 21,200l. for which execution was awarded against him.

Captain Fenwick being informed of the above decree by the arrival of his attorney, Mr. *William Webber*, in July 1786, and being apprehensive that the time allowed for appealing from the decision of the Mayor's Court might elapse, he embraced the opportunity of a *Danish* ship, that had put into *St. Helens* on account of bad weather, and embarked for *India* to save his property taken under the execution. He caused an appeal to be interposed from such decree in the Court of Appeals at *Madras*, which being prosecuted, the decree of the Mayor's Court was reversed; but the claimant, urged on by his attorney, and hoping that Mr. *Fenwick* would not be able to find bail to so large



large a sum, would be compelled to compromise the matter, commenced a fresh action in the Mayor's Court at *Madras*; but Mr. *Fenwick's* friends bailing him, *Malim*, then afraid of the perjuries he had committed being brought to light, proposed an arbitration, which Mr. *Fenwick*, being held to bail, in order to free himself acceded to, but not until he obtained the consent of Government. Affidavits were made on the part of Captain *Fenwick*, by the following persons, viz. *James Frayer*, third officer on board the *Success* Galley; *Thomas Fielder*, a corporal of artillery belonging to the detachment sent from the army, as before-mentioned, under the command of Ensign *Kenny*; *Hussam Sirang*, of the *Success* Galley; *Simon Roderigues*, carpenter; *Francis Abraham*, servant, and *Thomas Roderigues*†.

† These affidavits were sent home by the *Madras* Government to the Court of Directors.

*Frayer*

*Frayer* says, that on the passage of the *Success* Galley from *Nagore* to *Cuddalore*†, a vessel was perceived in the roads of *Porto Novo*; that orders were sent from Lieutenant General Sir *Eyre Coote* to Captain *Fenwick* to proceed with his ship to *Porto Novo* and recapture the vessel; that on his arrival near *Porto Novo* Roads, he dispatched his boats in company with the Honourable Company's long boat,—that about two or three o'clock in the morning they came up with and boarded the vessel, *when they found about 150 or 200 sepoys on board*, with their muskets loaded, and cartridge boxes full of ammunition, and *sixteen of them were taken or wounded*, the rest escaping in two large boats which had been employed landing an ele-

† It may not be improper to mention, that Captain *Fenwick* brought from *Nagore* <sup>in his ship</sup> to *Cuddalore* near 1000 fighting men to strengthen General *Coote's* army,—a number not to be credited, was not the return of the troops before the Committee.

phant



phant and were come for the others, and that Mr. *Forster* was appointed agent by the General, from whom he received his share of the prize money.

*Abraham* swears, that about midnight of the 18th day of *March*, the Company's long boat, with an officer§ and party of sepoys, were sent from the *Success* Galley in company with the ship's boats: about two or three hours after a smart firing of muskets was heard;—that on the next morning it appeared the vessel had been taken, and that Mr. *Nicholas*, the second officer of the *Success* Galley, was wounded; as also, that the vessel had *Dutch* colours, and no others, on board.

*Fielder* swore, that he was ordered on board a long boat at *Cuddalore*, to go along with the *Success* Galley to capture the vessel

§ Ensign *Kenny*, before-mentioned.

loaded

loaded with elephants;—he likewise says, that a number of muskets were left loaded on the quarter deck, and that the side of the vessel was let down, and every thing prepared for the delivery of the elephants,—that every thing had the appearance of the vessel's having been plundered, every chest and package being broke open. He was informed, and verily believes, that the black commander was on shore with *Hyder's* people.

*Hassam* <sup>&</sup> *Roderigues* deposed to the same effect,—they say the only colours on board were *Dutch*, and that Mr. *Nicholas*, the second officer of the *Success* Galley, was wounded.

Had the matter been fairly discussed, Captain *Ferwick* might certainly have securely rested the decision of the claim upon the claimant's own statement, the absurdities of which are too conspicuous to repeat.—

*Malim,*



*Malim*, in his first outset, means to infer a piratical seizure by his suggestion, that he was trading, in April 1781||, under British protection to the southward of *Cuddalore*, when taken by Captain *Fenwick* without any cause or reason. But finding his having been taken out of a port belonging to the enemy too generally known, he totally changes his ground in 1785, two years after filing his bill, when the other affidavits offered by him were sworn to; which affidavits state, that the vessel was taken by *Hyder's* people and carried to *Porto Novo*, where *Malim* was imprisoned, and the vessel and *Malim* remained in such state when Captain *Fenwick's* people boarded them. The same affidavits state, that *Hyder's* *sepoys* being made drunk, a land wind was only wanting to carry the

|| It is to be remarked, that the orders to take him are dated the 15th of *March*, and that the English had not a fort, factory, or village on the sea coast to the southward of *Cuddalore*. in April 1781

E

vessel

vessel to *Cuddalore*, when Captain *Fenwick* arrived and told them he came to *their assistance*.

Now the claimant himself deserted the material part of his case, and the whole appears a fabrication. No British document is offered to prove or support the colour of *British protection*, the above affidavits being all the evidence produced; but, on the contrary, he was proved to have had a *Dutch* pass and colours, and no other. The vessel is by him never stated to have been in *Hyder's* port at all,—by his own witnesses to have been taken only on the 18th of *March*, although clearly proved, by *General Coote's orders*, to have become the object of pursuit on the 15th of *March*, three days before.—It is also most positively sworn, that there was no military store on board, when it is proved, that 14 elephants were taken, a material part of military equipment in the black  
armies



armies in the East Indies, and 150 stand of arms, were found on board. They are not ashamed to confess, that 45 of them armed to trade on the *Malay* coast, suffered themselves to be taken by 15 men, and that to regain their liberty, they fell on the plan of opening a \* *cask of arrack and making all Hyder's sepoy's drunk*, a crime from which they were not only deterred as soldiers from committing, but expressly against their religion, and that too in their own port: and they likewise endeavour to give an idea, that these sepoy's being drunk, Mr. *Fenwick's* people took unmolested possession of the vessel, when it is clearly established, that resistance, by firing, was made, and about six people wounded. The claimant, or rather his attorney, fails in his assertion contained in the affidavits, that they waited for a land

\* How evidently this must appear to every one that knows *India*, to be the fabrication of an *English* attorney.

E 2

wind

*Capt. Sir Henry Cosby who was at that period  
Board of my ship for his health can equally pro-  
ve this assertion*

wind to convey the vessel to *Cuddalore*, when every seaman must know, that all the months of *March* and *April*, strong long shore winds prevail from the southward, and strong northerly currents, so that there is no time of the day that a vessel may not sail from *Porto Novo* to *Cuddalore*, and that the light land winds, which sometimes do not come off during these months for two or three days together, would only have exposed them to have been retaken. The wind was at S. by W. when they were captured, as fair a wind as could blow, and had been so for four hours before the capture, as appeared before the arbitrators by the ship's log book†, procured from the Nabob for that purpose.

The arbitrators met at *Madras* in *January*, 1788, and awarded, that all actions between

† Which log book is now in England.



the parties should cease, and that *Malim* should pay to Captain *Fenwick* forty pagodas, and mutual releases should be executed.

The arbitrators likewise declared, that Captain *Fenwick* had not in any shape exceeded the orders of General *Coote*, and that the whole suit had been instituted under a misstatement of facts†.

First, Because the claimant was clearly perjured, when he swore he was under British protection, and could not produce the pass, or set forth by whom granted or where registered, nor produce any British clearance when he set out on his voyage for the elephants.

Secondly, Because he evidently and maliciously concealed his having been in a port

† The award of the arbitrators is before the Court of Directors.

of *Hyder* with warlike stores, and that he himself was a prisoner.

Thirdly, Because it is evident he could not have intended the elephants for the *British* army, as the army's being at *Cuddalore* was a recent and unexpected event, owing to the *French* fleet's appearing on the coast; and as *Hyder* had been in possession of *Porto Novo* from *July* 1780, and the vessel was under a *Dutch* pass and colours, the only colours that stood a chance of being unnoticed by the *English* at the time the voyage must have been commenced.

Fourthly, Because of the improbability that must be evident to the most common understanding, that a vessel manned with 45 men, and armed to trade on the *Malay* coast, where vessels are ever liable to be cut off, should suffer themselves to be taken, as they swear they were, by fifteen men in an open boat.

The



The above and many corroborating circumstances, gave great reason to believe that *Malim* had no claim to the vessel, and that the following was the true state of the case: That the *Cander Baux* belonged to the celebrated merchant *Mahomat Ally*, who, residing at *Porto Novo*, was made a prisoner of by *Hyder Ally* in July 1780, and he and his family entered into terms with *Hyder Ally*, part of which were to send a vessel to the *Malay* coast for a cargo of elephants; but, during the absence of the vessel in question, *Mahomat Ally* fell under the displeasure of *Hyder*, who sent him and his family into the *Mysore* Country, where he soon after died from the cruel usage he received to make him discover his wealth. On the return of the vessel to *Porto Novo* with the elephants, finding an armed force sent on board, and that their owner was sent off to the *Mysore* Country, they sent to General *Coote* for his assistance, under the specious pretext they had been

been taken in there by force ; but, from the information the General had at that period in the army of *Hyder*, the whole was discovered to him, and he was induced to take the elephants for the use of the army at one-sixth of their value ;—and as an encouragement to the sepoys in his army to embark on board a ship on any expedition for the future, a circumstance they are always averse to, he caused the sepoys who had gone in the long boat on this business, to be paid their respective shares immediately,—and no doubt, as the General well knew that I was out of my own private fortune paying the failing charges of the *Success* Galley, and the seamen's wages, as well as that of the *Amazon*, an armed Snow I had lent to assist the army, he might be anxious to make me some recompence, by ordering me two-eighths of the produce.

Under the circumstances before stated, Sir *William Scott* is desired to give his opinion,



nion, whether he thinks the capture of the vessel by Captain *Fenwick*, was not a measure justifiable and indispensably his duty, under the orders of Sir *Eyre Coote*; and does ~~he~~ not think, for the reasons set forth, that the award of the arbitrators was just and reasonable, and such as, under the circumstances before stated, they were in justice obliged to give.

#### SIR WILLIAM SCOTT'S OPINION.

I AM of opinion, that this capture made by Mr. *Fenwick*, was not only strictly justifiable, but highly meritorious; and that the claim set up by *Malim* is fraudulent and colourable, and such as would have subjected the party to a condemnation in full costs, if the business had been subjected to the decision of a court that was in the least degree acquainted with the first principles of that species of law by which such a case

F

ought

ought to have been determined : and I think the award made by the arbitrators to be in no other respect exceptionable, than that it has done very imperfect justice, by not giving Mr. *Fenwick* a larger compensation for the gross injury that has been done him. I must add, that a good deal of the hardships sustained by Mr. *Fenwick*, seems to have arisen from the Mayor's Court at *Madras* taking upon itself the cognizance of a cause over which it has no manner of jurisdiction, and conducting the proceedings in a way that is directly the reverse of what the nature of a prize cause demands. It was undoubtedly in the power of the claimant to have compelled Mr. *Fenwick* to a legal adjudication in a court of admiralty, where the result would certainly have been, upon the facts here stated, a sentence of condemnation against the claimant, with costs. But to entertain a civil action upon such a subject, and to suffer a judgment to go by mere default



default against a captor absent, and ignorant of the existence of such a suit, is, in the first place, an assumption of power utterly unwarranted by law ; and, in the next place, is such an exercise of that power, as must, if repeated, very materially affect the interests of this country, and of the *East India Company*, by giving the most effectual discouragement to all persons employed in the military service.

(Signed)

*Doctors Commons,*  
December 30th, 1788.

WILLIAM SCOTT.

*The Opinion given by T. H. DAVIS, Esq.  
the HON. COMPANY'S Advocate-General at  
Calcutta, on his inspecting the Proceedings of  
the Mayor's Court, at Madras, and the Orders  
under which your Memorialist acted.*

I THINK by the orders of the Commander in Chief, and the Select Committee of *Madras*, that Captain *Fenwick* was indispensably obliged to act as he did, in proceeding to *Porto Novo Roads*, and retaking the vessel, as he was directed; and that he could not have disobeyed those orders without the forfeiture of his *character* and *honour*, and, most probably, the *loss of his command*. I am of opinion also, that the *ultimate* responsibility will rest with those under whose commands he acted. But that, nevertheless, he is liable, in the first instance, to be sued *in a court of competent jurisdiction*, if the vessel taken by him was not a legal capture.

The



The Mayor's Court *had no right* to take cognizance of the cause respecting a prize taken during an open war with *France* and *Hyder Ally*.—The Court of Admiralty has the *sole and exclusive* jurisdiction of all such questions.

The Mayor's Court having no other jurisdiction than what it derives from its charter, and a late Act of Parliament, cannot, consequently, take cognizance of the question.

I apprehend, that every *British* subject who is a sojourner at *Madras*, is liable to be sued during such his sojourning, in all causes over which the Mayor's Court has a competent jurisdiction; and that the plaintiff being a black man, residing at *Porto Novo*, and not a *British subject*, does not affect his right to sue. But if such *British subject* shall have left *Madras* before process is served on him, the process prescribed by the *charter*

must be strictly followed, or *that Court* cannot proceed against him at all.

I have read attentively the whole of the proceedings of the Mayor's Court, instituted against Captain *Fenwick*, and I confess I read them with much surprize; nor can I well conceive how that Court could so far lose sight of the charter under which they act, as to proceed against a defendant, who had, in no manner, been before the Court. By the CHARTER of *the MAYOR'S COURT at Madras*, that Court can only issue process against persons residing, or being, or who, at the time such cause or action did or shall accrue, did or shall reside, or be within the said fort or town, &c. &c.—From the different papers I have read, and from the proceedings of the Mayor's Court, it appears that Captain *Fenwick* was not resident at *Madras* at the time process was issued against him, having then actually sailed for *Europe*; and it is certain he was not there when the cause of  
action



action accrued. But supposing at the time the process issued, he had been liable to that jurisdiction, yet, unless the summons had been previously served on him, or on a return of *non est inventus*, a sequestration had not only issued, but that some of his effects had been sequestered, or unless he had voluntarily appeared by his attornies, the Mayor's Court had no right or authority whatever to proceed against him in his absence.—*I think, therefore, the decree given against him is ILLEGAL and UNJUST.*

(Signed),

T. H. DAVIS,

CALCUTTA,

Advocate-General.

May 25, 1787.

F 4

Extract

*Extract of a Letter from the MADRAS GOVERNMENT, enclosing me the Attorney General's Opinion to that Government.*

S I R,

I AM directed to transmit you an extract of a letter on the subject of the prosecution against you, addressed to the Governor in Council by the Company's Attorney General of this place for your Direction.

(Signed),

C. N. WHITE.

Fort George.

The bill is brought against him for having, without lawful authority, captured the brigantine *Cander Baux*, the complainant's property, in *April 1781*. It states, that the owner was then under *British* protection, and lays the damages at 35,000 star pagodas;—*Captain Fenwick* not having appeared to this bill of complaint, a decree passed against him in *October, 1785*; but I conceive he may have



have a hearing under the fifth of George II. chap. 25. on petition to the Court, and on giving security for such costs as the Mayor's Court may think reasonable.

The forty-fourth rule established by the Court for the regulation of its practice, seeming to have been founded on this act, I cannot suppose it will hesitate to grant a rehearing, and to place Captain *Fenwick* in the situation he would have been in had he originally appeared,—he will then have an opportunity, and ought to avail himself of it, of pleading to the jurisdiction of the Court, which certainly does not extend to the *decision of prize causes*.

(Signed),

ROBERT CLERK,

*Deputy Secretary*

A true extract.

## A P P E N D I X.

[ A. ]

*Captain Cuthbert Ferwick, Commander of the  
Success Galley.*

S I R,

HIS Highness the Nabob,  
having put your ship under orders of the  
Honourable the President and Select Com-  
mittee, I have their commands to inform  
you, that having taken your loading of rice,  
you are then to make the best of your way to  
*Cuddalore*, where, should you receive no or-  
ders to the contrary from Lieut. General Sir  
*Eyre Coote*, you are to deliver your cargo to  
the Chief and Council. Such directions as  
you shall receive from the Commander in  
Chief



Chief of the army, or from the Chief and Council of *Cuddalore*, you are to follow, it being the intention of the Government, in the present destination of the *Succefs* Galley, she shall be employed so as to afford the best assistance to the army. The accompanying are such signals as are established for this port. Should the five vessels which have been dispatched from hence, be still laying at *Sadras*, you will direct them to proceed to *Cuddalore* with all expedition.

Inclosed you will receive copies of the signals for 1779 and for 1780; in case of the appearance of any vessel, you are to make use of the latter, which, if not answered, but on no account otherwise, you are to make use of the former. The signals of this port are also sent to you accompanying;—should you be in danger of being taken by the enemy, but not until the last extremity, you are to heave the signals over-board.—

Dated

Dated in *Fort St. George*, the 18th day of  
*February*, 1781, and signed by order of the  
President and Select Committee,

R. SULLIVAN, *Secretary.*

[ B. ]

To *Captain Cuthbert Fenwick*, Commanding the  
*Success Galley*, *Cuddalore.*

S I R,

IN consequence of your hav-  
ing engaged to proceed to *Nagore*, there to  
receive on board troops which will be em-  
barked at that place, and be brought from  
thence hither, you are hereby authorised to  
pro-



proceed accordingly ; and in conjunction with Mr. *Huddleston*, the Company's Resident at that place, use all your endeavours to expedite that service ; receiving on board also, whatever rice, or other articles of provisions for the army that gentleman may deliver to you, and you may be able to carry. As Mr. *Jourdan*, who goes passenger on board your ship to *Nagore*, has been intrusted with public dispatches to be delivered at *Trinquebar*, I desire you will touch at that place, and wait there no longer than may be found necessary for the performance of that service.

I wish you success, and am

Your most humble Servant,

EYRE COOTE.

Camp, Newtown,

March 1, 1781.

P. S. Should the cargo of the *Amazon* be nearly landed, it is my pleasure that she  
do

do accompany you also, for the purpose on which you are going, and act under your orders; if she should not be ready, you are not to wait for her, as she shall have orders to follow you.

[ C. ]

CAPTAIN FENWICK.

SIR,

I HAVE received your note; in consequence, have ordered all the boats of this settlement off to land the troops, which you will please immediately to send on shore.—A snow belonging to a *Chuliar* merchant, mounting five three-pounders, four swivels, and forty-five Lascars,---laden with rice, pepper, elephants, &c. having been taken by *Hyder's* people off *Porto Novo*, and



carried into that place, the General, Sir Eyre, being desirous of retaking her, has ordered that a vessel of force should be dispatched, with a proper force of military, to retake her. She at present lays in deep water, and we think she may be easily recovered. On the disembarkation of your sepoys, we propose to dispatch the *Succest*, with a proper force of military.---There is a vessel at an anchor before the factory-house, mounting four swivels, and is a proper vessel for this expedition.

C. B. DENT

*Cuddalore,*

Half past 6 o'clock.

To

[ D. ]

*To Captain C. Fenwick, commanding the  
Success Galley.*

SIR,

I AM desired by Sir *Eyre Coote* to acquaint you, it is his pleasure you land the troops with all expedition, for which boats are ordered to attend, and immediately after to proceed to *Porto Novo* Roads, and retake a vessel which was seized yesterday morning by *Hyder's* armed boats off that place; her recovery is of importance:---Sir *Eyre*, therefore, wishes you could contrive so as to arrive there early tomorrow morning, or sooner, if possible.

I am, Sir,

Your most obedient Servant,

THOMAS GRAHAM.

*Camp, Newtown,  
March 15, 1781.*

To



( 69 )

[ E. ]

*To Captain C. Fenwick, commanding the  
Success Galley.*

SIR,

THE Commander in Chief  
wishes, whether you can land all the men or  
not, by no means to lose the night in drop-  
ping down to *Porto Novo*; for, that should  
you not reach it before morning, the enemy,  
on seeing your approach, may run her on  
shore

I am, Sir,

Your most humble Servant

THOMAS GRAHAM.

*Camp, 15th March,  
8 P. M.*

Marked on the Back  
*Express.*

G

To

[ F. ]

*To Captain C. Fenwick, commanding the  
Success Galley.*

SIR,

I HAVE received your's, with the list of the cargo. But as the General has appointed Mr. Forster agent for the captors, it will be necessary that he countersign it, when I will lay it before the General, who will settle the business to the satisfaction of all parties.

I am, Sir,

Your most humble Servant,

THOMAS GRAHAM.

To



[ G. ]

*To Captain C. Fenwick, commanding the  
Success Galley.*

S I R,

BEING informed that another vessel from the eastward, loaded with merchandize, has been seized by *Hyder's* armed boats off *Porto Novo*, I direct that you immediately proceed thither, and endeavour to retake her. Should you succeed, send her, under charge of proper people, into the Roads of *Cuddalore*, and keep your station, to protect and give warning to other vessels which may come there. Should the intelligence prove false, you will, nevertheless, keep your station ; for which purpose, you had better carry with you two *Cattamarans*: if you can destroy any of the enemy's armed boats, I recommend your doing it, as it will be rendering an essential service.

I am, Sir,

Your most obedient Servant,

EYRE COOTE,

Camp, Newtown,

23d March, 1781.

T.

[ H. ]

*To Captain C. Ferwick, commanding the  
Success Galley.*

S I R,

YOU will herewith receive two packets, containing the Commander in Chief's dispatches for *Madras*, which you will immediately deliver upon your arrival there.

Enclosed you will receive a paper of signals for your guidance, which you will pay all due attention to, when occasion may require.

You will now sail to *Fort St. George*, from whence you are to return to this port with all possible expedition, as your early arrival with the cargo, which is to be



( 73 )

be put on board of you at the Presidency,  
is of the utmost importance to the army.

I am, S I R,

Your most humble servant,

THOMAS GRAHAM.

*Camp, Newtown,  
31st March, 1781*

---

[ I. ]

*To Mr. C. FENWICK.*

S I R,

I am directed to acknowledge  
the receipt of your representation, under  
date the 29th inst. with the papers accom-  
panying it, and to acquaint you, that this  
Government will submit the same to the  
consideration of the Honourable Court of  
Directors

Directors by the ship *Henry Dundas*, now under dispatch for England, and will have *much satisfaction* in mentioning in the most favourable terms, the services which were rendered by the ship under your command, during the late war in *India*,

I am Sir,

Your most obedient humble servant,

CHARLES N. WHITE,

*Secretary.*

Fort St. George,  
Jan. 30, 1788.

---

[ K. ]

C. FENWICK, *Esq.*

S I R,

I have had the honour of receiving your's of yesterday's date, accompanied



panied by a state of your case as laid before the arbitrators appointed under a rule of the Mayor's Court.

In answer to that part of your letter, which requests that after a perusal of the state of your case, I would give my opinion of your services whilst acting with the army under Sir Eyre Coote, and the opinion the army had, in general, of the alacrity and chearfulness with which you performed the orders of the Commander in Chief; I have the pleasure to acquaint you, that I considered the *services* you performed of the *greatest importance to the army*, while it lay at *Cuddalore*, and have always understood, that *they* were executed with *zeal, alacrity, and ability*, and I am certain every *officer in the army*, who had an opportunity of knowing the critical situation in which it stood at the time, and the satisfaction your conduct gave the Commander in Chief, holds the

same opinion, both of the importance of the services you performed, and the manner in which they were executed.

I have the honour to be,

S I R,

Your obedient humble servant,

HENRY MALCOLM.

*Adjutant General.*

*Fort St. George,  
Jan. 28, 1788.*

F I N I S.